

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-167 (Sub- No. 1190X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

227577

**RESPONSE TO
OCTOBER 9, 2009 LETTER FROM JOHN D. HEFFNER**

1. Now come Eric Strohmeier and James Riffin (“Offerors”) who herewith file this Response to October 9, 2009 Letter from John D. Heffner in the above entitled proceeding.
2. On October 9, 2009, John D. Heffner, counsel for Anthony Macrie, wrote a letter to the Offerors, which letter Mr. Heffner filed in the above entitled proceeding. In his October 9, 2009 letter, Mr. Heffner asked the Offerors to strike a portion of one of the pleadings the Offerors filed on September 30, 2009. stating: “At page 11 of your filing submitted to the Board on September 30, 2009, you reference the recent filing in Finance Docket Nos. 35296 and 35297” Two of the four pleadings the Offerors filed on September 30, 2009, contain more than eleven pages.
3. One of the pleadings the Offerors filed on September 30, 2009, was entitled “Reply to NJT 9/19/09 Pleading; Amendment of OFA; Reply to Conrail’s New Issues.” In paragraph 47 of that pleading, which appears on page 11 of that pleading, in the section entitled The Tunnel Project, the Offerors made the following statement:

“47. In *New Jersey Seashore Lines – Operation Exemption – Clayton Companies, Inc.*, Finance Docket No. 35297, filed September 10, 2009, Clayton Sand sought authority to authorize New Jersey Seashore Lines to operate Clayton Sand’s line of railroad between Lakehurst and Woodmansie, NJ. This line of railroad has been out of operation for over 20 years. Clayton Sand desires to reinstate rail service on this line, for the sole purpose of moving sand from its Woodmansie Sand quarry to Secaucus for The Tunnel Project. Presently, the only site Clayton Sand can use to unload its railcars of sand, is Conrail’s

Elizabeth yard. As discussed above, the Offerors' Jersey City site is more economical / more environmentally friendly, than Conrail's Elizabeth site.

4. The Offerors will presume that Mr. Heffner was making reference to the paragraph 47 reproduced above.

5. In Mr. Heffner's October 9, 2009 letter, Mr. Heffner stated:

"Presumably you have referenced my client's filing in an effort to imply that either NJSL and / or Clayton are in some way cooperating or working with you to develop traffic on the Conrail line should you be successful in acquiring it through the OFA process. This is not the case."

6. In a letter submitted to the Board on October 1, 2009, Mr. Heffner made the following similar statement:

"Any statement or implication by Mssrs. Strohmeyer and Riffin, that Mr. Macrie or his two companies are in any way cooperating or working with them is totally false"

7. Mr. Heffner also stated in both letters filed with the Board:

"I do not represent Clayton"

RESPONSE TO MR. HEFFNER'S LETTER

8. Paragraph 47 made note that New Jersey Seashore Lines had filed to operate Clayton Sand's 13 miles of rail line, presumably for the purpose of hauling sand destined for The Tunnel Project. (The only other commodity produced in that area of New Jersey is cranberries. Spending multi-millions of Dollars to rehabilitate the line prior to putting the line back into service, to haul cranberries by rail, would not make economic sense.) The Offerors further noted that their proposed Jersey City transload site was closer to The Tunnel Project than Elizabeth Yard, then concluded that "the Offerors' Jersey City site is more economical / more environmentally friendly, than Conrail's Elizabeth site."

9. Paragraph 47 did not state, nor even remotely imply, that New Jersey Seashore Lines was cooperating with the Offerors.

10. The Offerors question Mr. Heffner's motivation in submitting these two letters to the Board: Are Mr. Heffner and Mr. Macrie just being paranoid? Are they spoiling for a fight with the Offerors? Are they trying to draw the Offerors into the New Jersey Seashore Lines' proceeding? Are they trying to delay / postpone / obfuscate this proceeding?

11. The Offerors noted New Jersey Seashore Lines' filing. They also privately noted a number of potential infirmities (Mr. Heffner's failure to mention that the Line had previously been operated by Ashland Railroad, and that Ashland Railroad had as recently as 2007, represented that it was operating the Clayton line as a line of railroad). The Board also noted some potential problems, and in its September 25, 2009 Order, directed Seashore Lines to address the issues of whether Clayton Sand needed prior authority to acquire the line and whether Clayton Sand would acquire residual common carrier obligations.

12. In response to the Board's September 25, 2009 Order and Mr. Heffner's October 1, 2009 filing, Mr. Riffin spoke with Mr. William Clayton, and suggested that he consult with a railroad attorney (Fritz Kahn), which he did.

13. The Offerors have no desire to be drawn into a fight with Seashore Lines. If Seashore Lines desires to place Clayton's line back into service, more power to them!

14. Regarding paragraph 47, the Offerors take the position that the paragraph does not even remotely suggest that Seashore Lines is cooperating with the Offerors. Furthermore, Mr. Heffner's October 1, 2009 letter makes it abundantly clear that Seashore Lines is not cooperating with the Offerors.

15. For the above reasons, the Offerors will respectfully decline to strike any portion of paragraph 47, unless so ordered by the Board.

Respectfully submitted,


Eric S. Strohmeier


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2009, a copy of the foregoing Response to October 9, 2009 Letter from John D. Heffner, was mailed via first class mail, postage prepaid, to the parties of record in this proceeding (Conrail, NJT) and to John Heffner.


James Riffin